IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

CRP.No. 266 of 2004()

AGAINST THE ORDER DATED 19/11/2003 IN IA 4070/03 IN FD IA 2222/91 IN OS.281/1988 of ADL.SUB COURT, THALASSERY
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REVN. PETITIONER: RESPONDENT/DEFENDANT NO.1:

P.K. SANTHA, D/O. KANNAN, AGED 46 YEARS
NO OCCUPATION, ELAYAVOOR AMSOM, CHOVVA DESOM,
KANNUR DISTRICT.

BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI.P.G.RAJAGOPALAN
SRI.M.GOPIKRISHNAN NAMBIAR

RESPONDENTS: PETITIONERS/PLAINTIFF & 2ND DEFENDANT:
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1. P.K. ROHINI, D/O. KANNAN, 50 YEARS,
NO OCCUPATION, ELAVAYOOR AMSOM,
CHOVVA DESOM.

2. P.K. HARIDAS, S/O. KANNAN, 57 YEARS,
INDUSTRIALIST AND BUS OPERATOR,
ELAVAYOOR AMSOM, CHOVVA DESOM.

BY SRI.B.KRISHNAN
R1 & R2 BY SRI.R.PARTHASARATHY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 266 OF 2004

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Dated this the 20th day of September, 2007.

O R D E R

This revision petition is preferred against the order of the Subordinate Judge, Thalasserry in I.A.4070/03 in O.S.281/88. The suit is one for partition and a final decree was passed by the Court which was confirmed in appeal and now the grievance of the first defendant is that at the time of measuring the property the Commissioner appointed by the Court had committed serious mistake which has resulted in injustice to him and therefore the matter requires correction or annulment at the hands of the Court. The Court below did not find in favour of the petitioner and dismissed the application. It is against that order the present CRP is filed. It is true that a final decree had been passed as early as in February, 1994 and an appeal preferred against the said final decree was dismissed in the admission stage in A.S.124/95 on 1.3.95. So far as the merit is concerned the matter has become final. Section 151 and 152 of the CPC makes it abundantly clear that when there is a mistake or omission

committed it can be rectified by the Court and there is no time limit for the same. As per the final decree, plots A1 to A5 in Ext.C3 plan had been set apart to the share of the 2nd petitioner and plots B, B1 and B2 in C3 plan is set apart to the share of the respondent who is the present petitioner herein. The decree also provides for equalisation of the shares. The 2nd petitioner in the final decree application is directed to pay a sum of Rs.32,616/- to the respondent for which the property is made a charge.

2. Now, the point involved herein is a mistake committed by the Commissioner at the time of noting down the measurement of the property. For plot B the side measurement is shown as 19.40 meters whereas actually it is only 9.40 meters. The total extent of plot B is shown as 16.45 cents. If the side measurement of the property is only 9.40 meters and not 19.40 meters, then necessarily there will be reduction of the extent of plot B. Now, the entire final decree is passed on the premises that B plot is having an extent of 16.45 cents whereas if it is 9.40 meters alone, it

will be less. So, in order to do actual justice to the parties it has to be stated that the actual extent of plot B has to be recalculated and the extent of plot B to be arrived at. If the extent of plot B is reduced by some extent, then the centage value adopted for that extent may have to be reduced and the liability of the 2nd petitioner in the final decree application to pay an amount of that extent may arise because already there is an order to him to pay the amount towards equalisation of shares. So, for the sole purpose of considering the actual extent of plot B and for working out the amount towards equalisation of shares I direct the Court below to consider that point only and pass a revised order which can be an order either under Section 151 or 152 of CPC so that the party is not deprived of what he is entitled to in law. Therefore, the order under challenge is set aside and the present I.A. is remitted back to the Court below for the sole purpose of determining the extent of plot B taking in to consideration the side measurement as 9.40 meters, then work out the extent that will be reduced on plot B by

adopting the centage value given by the Commissioner who was appointed for the said purpose of finding out, what will be the difference and then direct that amount also to be paid by the 2nd petitioner in the final decree application towards the equalisation of shares and for which the Court can make the property allotted to the 2nd petitioner in the final decree application as a charge on the property. Parties are directed to appear before the Court below on 23.10.07.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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